Application Number 10/530426
Response to the Office Action dated September 2, 2008

REMARKS

Favorable reconsideration of this application is requested in view of the following remarks.

The claim 1 limitation that the low refractive index layer is in contact with the optical separating layer and the transmittance adjusting layer is supported by Fig.2 and the specification at page 7, line 31 – page 8, line 2 and page 22, lines 5-19.

Claims 1-3, and 6 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Higuchi et al. (U.S. Patent No. 6009070). Applicants respectfully traverse this rejection.

Higuchi discloses a double-layer optical disk that includes a reflection layer having two thin layers (7a and 7b) and a thin layer (8) formed between the thin layer 7a and a spacer layer (3) (see Fig. 4B and coln. 7, lines 13-18 and 24-29). Even if the layer 7b and the layer 8 were equivalent to the transmittance adjusting layer and the low refractive index layer, respectively, the reference includes the thin layer 7a between the layer 7b and the layer 8. Thus, Higuchi fails to disclose that the low refractive index layer, which is formed between the optical separating layer and the transmittance adjusting layer, contacts the transmittance adjusting layer and the first optical separating layer as claim 1 requires.

In addition, Higuchi discloses that the thin layer 8 is inserted between the spacer and the thin layer 7a in order to prevent the thin layer 7a from being affected by moisture or residual monomers from the spacer (see coln. 7, lines 24-29). In contrast, in the medium of claim 1, by inserting the low refractive index layer between the transmittance adjusting layer and the first optical separating layer, the low refractive index layer prevents the transmittance adjusting layer, i.e., the thin layer 7b, instead of the thin layer 7a, from being affected by moisture of the first optical separating layer (see page 12, lines 16-29 of the specification).

Moreover, Higuchi discloses use of a reading beam (see for example, coln. 4, lines 31-49) and accordingly, discloses a readable optical disk but fails to disclose that

the information can be reproduced by irradiation of a laser beam, i.e., a rewritable optical disk, as claim 1 requires.

Further, claim 1 provides the positional relationship of the layers, i.e., the structure of the medium. Thus, claim 1 should be interpreted as a product claim and not a product-by-process claim.

Accordingly, claim 1 is distinguished from Higuchi, and the rejection should be withdrawn.

Claims 5 and 7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi et al. (U.S. Patent No. 6,009,070). Applicants respectfully traverse this rejection.

Claims 5 and 7, which depend from claim 1, are distinguished from Higuchi at least for the same reasons as discussed for claim 1 above.

In addition, Applicants respectfully question the rejection's contention that the layers of the medium of Higuchi could be rearranged as an obvious matter of choice. In Fig. 4B of Higuchi, the thin layer 8, which is formed between the spacer layer and the thin layer 7a, prevents the thin layer 7a from being affected by the moisture or residual monomers contained in the spacer layer 3 (see coln. 7, lines 24-29). In a medium of Fig. 4A of Higuchi, the thin layer 2b is formed between the thin layer 2a and the spacer. In addition, in Fig. 4A, the thin layer 6 is formed on top of the thin layer 2a to protect the thin layer 2a from moisture and residual monomers of the substrate (see Fig. 4A and coln. 6, line 67 – coln. 7, line 13). In Fig. 4B, instead of the thin layer 6, the thin layer 7b is inserted between the substrate 1 and the thin layer 7a. Therefore, there is no reasonable basis to consider that the thin layers 7a and 7b of the reference can be rearranged.

Accordingly, claims 5 and 7 are distinguished from the reference, and the rejection should be withdrawn.

Claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi et al. (U.S. Patent No. 6,009,070) in view of Nishihara et al. (U.S. Patent Application Publication No. 2002/0054983). Applicants respectfully traverse this rejection.

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Claim 1 and accordingly, claim 4 are distinguished from Higuchi for at least the same reasons as discussed for claim 1 and claims 5 and 7 above. Nishihara discloses an information recording medium that has a first and a second information layers and that the first information layer includes a recording layer in which a reversible phase changes occur (see para. [0016]). Nishihara, however, fails to disclose that the low refractive index layer is formed between the optical separating layer and the transmittance adjusting and contacts these layers as claim 1 and accordingly, claim 4 requires. Thus, the reference does not remedy the deficiencies of Higuchi. Accordingly, claim 4 is distinguished from Higuchi in view of Nishihara, and this rejection should be withdrawn.

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.

Respectfully submitted,

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Dated: December 2, 2008

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